

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
1:19 CV 39**

GEORGE MURRAY SIMMONS, II,)	
)	
Plaintiff,)	
)	
v.)	ORDER
)	
INGLES MARKETS, INC.; GREG)	
HUGHES, Store General Manager; and JEFF)	
LNU, Night Stock Manager,)	
)	
Defendants.)	
)	

This matter is before the Court on the Motion to Dismiss by Defendant Greg Hughes (“Hughes”) (Doc. 9) and “Plaintiff George Murray Simmons II Motion to Request a Jury Trial” (Doc. 20).

I. Motion to Dismiss by Defendant Greg Hughes (Doc. 9)

Hughes filed his Motion to Dismiss (Doc. 9) and a supporting brief (Doc. 10) on April 8, 2019. The corporate Defendant answered on April 9, 2019. (Doc. 11).

Plaintiff responded to the Motion to Dismiss on April 22, 2019 (Docs. 17, 18), and Hughes replied on April 29, 2019 (Doc. 21).

The same day, Plaintiff filed his “Amended Complaint” (Doc. 22) in which “Plaintiff asks the court to amend the list of Defendants to add Ingles Markets INCORPORATED . . .” Id. at 1.

As the “Amended Complaint” was filed 21 days after the filing of the Motion to Dismiss by Hughes and 20 days after the filing of the Answer by the corporate

Defendant, the amendment was proper as a matter of right and did not require Court intervention. See Fed. R. Civ. P. 15(a)(1).

Hughes has now filed a motion to dismiss the Amended Complaint (Doc. 25) along with a supporting brief (Doc. 26).

The previous Motion to Dismiss filed by Hughes is therefore moot.

II. Request for Jury Trial (Doc. 20)

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, a party may demand a jury trial on any issue triable of right by serving the other parties with a written demand no later than 14 days after the last pleading directed to the issue is served and filing the demand in accordance with Rule 5(d). Fed. R. Civ. P. 38.

Here, Plaintiff's Motion to Request a Jury Trial (Doc. 20) was filed on April 22, 2019, which was 13 days after the filing of the original answer by the corporate Defendant on April 9, 2019. Neither Defendant has responded or objected to Plaintiff's request for a jury trial.

IT IS THEREFORE ORDERED THAT:

1. The Motion to Dismiss by Defendant Greg Hughes (Doc. 9) is **DENIED AS MOOT**; and
2. Plaintiff's "Motion to Request a Jury Trial" (Doc. 20) is **GRANTED** with respect to any issue triable of right by a jury.

Signed: May 14, 2019


W. Carleton Metcalf
United States Magistrate Judge

